

**Lee County Board Of County Commissioners**  
**Agenda Item Summary**

Blue Sheet No. 20030232

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Award the Professional Services Agreement for CN-02-29 SANDY LANE EXTENSION CORRIDOR ALIGNMENT STUDY, to Cella & Associates Inc. for a total contract amount of \$216,419.78.

**WHY ACTION IS NECESSARY:** Pursuant to the Contract Manual, approved by the Board on September 25, 2001, the Board is required to approve all Professional Services Agreements.

**WHAT ACTION ACCOMPLISHES** This project involves the Consultant providing professional services to perform those environmental, and engineering services required for a Corridor Alignment Study. This includes consideration of all social, economic, and environmental effects, and mitigation as required by the County.

**2. DEPARTMENTAL CATEGORY:**

9. Transportation  
COMMISSION DISTRICT #:

*C9E*

**3. MEETING DATE:**

*03-11-2003*

**4. AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:**

*(Specify)*

- STATUTE
- ORDINANCE
- ADMIN. CODE *AC-4-4*
- OTHER

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT *Transportation*
- C. DIVISION
- BY: *Scott Gilbertson, Director*

**7. BACKGROUND:**

On November 19, 2002, the Board of County Commissioners approved the ranking of Consultants and authorized negotiations to commence with the number one ranked firm for an amount not-to-exceed \$200,000.00. The ranking was as follows: (1) URS Corporation; (2) WilsonMiller Inc.; and (3) HDR Engineering.

Contract negotiations were successful with the number one ranked firm, Cella & Associates, but exceeds the original amount approved by the Board on November 19, 2002. We are therefore requesting Board approval of the final agreement.

Funds are available in account #20408418804.506510 (50%) and 20408418808.506510 (50%)

Attachments: Two (2) original PSA's for execution

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services <i>2/23/03</i>				G County Manager
					OA	OM	Risk	GC	
<i>2/19/03</i> <i>[Signature]</i>	<i>[Signature]</i>		<i>PAO</i> <i>2/20/03</i>	<i>Adria</i> <i>Jesser</i>	<i>1 Rev</i> <i>2-24-03</i>	<i>AM</i> <i>2/24/03</i>	<i>or</i> <i>2/24/03</i>	<i>My</i> <i>2-24-03</i>	<i>[Signature]</i> <i>2-20-03</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty  
Date: *2/24/03*  
Time: *1:00 pm*  
Forwarded To:  
*Budget*  
*2/24/03 1:10pm*

RECEIVED BY  
COUNTY ADMIN. *EN*  
*2-24-03*  
*1:40*  
COUNTY ADMIN.  
FORWARDED TO:  
*2/25/03 5:00*

**PROFESSIONAL SERVICES AGREEMENT**

This PROFESSIONAL SERVICES AGREEMENT is made and entered into this day of \_\_\_\_\_, 2002, between the Board of County Commissioners of LEE COUNTY, a political subdivision of the STATE OF FLORIDA hereinafter referred to as the "COUNTY", and **Cella & Associates, Inc.**, hereinafter referred to as the "CONSULTANT".

WITNESSETH

WHEREAS, the COUNTY desires to obtain the professional services of said CONSULTANT services of said CONSULTANT to provide and perform professional services as further described hereinafter concerning the Project to be referred to and identified as: **Sandy Lane Extension Corridor Alignment Study**, and

WHEREAS, the CONSULTANT hereby certifies that CONSULTANT has been granted and possesses valid, current licenses to do business in the State of Florida and in Lee County, Florida, issued by the respective State Boards and Government Agencies responsible for regulating and licensing the professional services to be provided and performed by the CONSULTANT pursuant to this Agreement; and

WHEREAS, the CONSULTANT has reviewed the professional services required pursuant to this Agreement and is qualified, willing and able to provide and perform all such services in accordance with the provisions, conditions and terms hereinafter set forth; and

WHEREAS, the selection and engagement of the CONSULTANT has been made by the COUNTY in accordance with the provisions of the Consultants' Competitive Negotiation Act, Chapter 287.055, Florida Statutes, and in accordance with the provisions of the Lee County Contract Manual for Professional Services as approved and put into effect by the Lee County Board of County Commissioners, September 25, 2001, and as subsequently revised.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree that with the mutual acceptance of this Agreement as indicated hereinafter by the execution of this Agreement by both parties that a Contract shall exist between both parties consisting of:

**ARTICLE 1.00 - SCOPE OF PROFESSIONAL SERVICES**

CONSULTANT hereby agrees to provide and perform the professional services required and necessary to complete the services and work as set forth in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", which EXHIBIT "A" is attached hereto and made a part of this Agreement.

## **ARTICLE 2.00 - DEFINITIONS**

The following definition of terms associated with this Agreement is provided to establish a common understanding between both parties to this Agreement as to the intended usage, application, and interpretation of such terms pertaining to this Agreement.

### **2.01 COUNTY**

The term COUNTY shall refer to the Board of County Commissioners of Lee County, a political subdivision of the State of Florida, and any official and/or employees thereof who shall be duly authorized to act on the COUNTY's behalf relative to this Agreement.

### **2.02 CONSULTANT**

The term CONSULTANT shall refer to the individual or firm offering professional services which by execution of this Agreement shall be legally obligated, responsible, and liable for providing and performing any and all of the services, work and materials, including services and/or work of sub-consultants and subcontractors, required under the covenants, terms and provisions contained in this Agreement and any and all Supplemental Agreements or Change Orders thereto.

### **2.03 PROFESSIONAL SERVICES**

The term PROFESSIONAL SERVICES shall refer to all of the services, work, materials and all related professional, technical and administrative activities which are necessary to be provided and performed by the CONSULTANT and its employees and any and all sub-consultants and subcontractors the CONSULTANT may engage to provide, perform and complete the services required pursuant to the covenants, terms and provisions of this Agreement.

### **2.04 SUB-CONSULTANT**

The term SUB-CONSULTANT shall refer to any individual or firm offering professional services which is engaged by the CONSULTANT to assist the CONSULTANT in providing and performing the professional services, work and materials for which the CONSULTANT is contractually obligated, responsible and liable to provide and perform under this Agreement. The COUNTY shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the CONSULTANT and any SUB-CONSULTANT.

### **2.05 SUBCONTRACTOR**

The term SUBCONTRACTOR shall refer to any individual, company or firm providing other than professional services which is engaged by the CONSULTANT to assist the CONSULTANT in providing and performing services, work and materials for which the CONSULTANT is contractually obligated, responsible, and liable to provide and perform under this Agreement. The COUNTY shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the CONSULTANT and any SUBCONTRACTOR.

## 2.06 PROJECT

The term PROJECT shall refer to such facility, system, program or item as described in the summary statement set forth in the Preamble on Page One of this Agreement.

## 2.07 BASIC SERVICES

The term BASIC SERVICES shall refer to the professional services set forth and required pursuant to this Agreement and as described in further detail in the attached EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", which EXHIBIT "A" is attached hereto and made a part of this Agreement.

## 2.08 ADDITIONAL SERVICES

The term ADDITIONAL SERVICES shall refer to such professional services as the COUNTY may request and authorize, in writing, the CONSULTANT to provide and perform relative to this Agreement which are not included in the BASIC SERVICES. Additional services shall be authorized by the execution of both parties to this Agreement of either a Supplemental Agreement or a Change Order Agreement.

## 2.09 SUPPLEMENTAL AGREEMENT

The term SUPPLEMENTAL AGREEMENT shall refer to a written document executed by both parties to this Agreement setting forth and authorizing professional service tasks which were not set forth in and are supplemental to the Scope of Services contained in the initial Professional Services Agreement or other SUPPLEMENTAL AGREEMENTS issued thereto. The SUPPLEMENTAL AGREEMENT, which shall be executed on a Lee County standard form, shall set forth the authorized supplement(s) to the: Scope of the Professional Services tasks, work or materials to be performed or provided by the CONSULTANT; the compensation and method of payment; the schedule or time period for performance and completion; and the guidelines, criteria, or requirements pertaining thereto.

The amount of the change in contract compensation and time set forth in any and all Supplemental Agreements executed and issued under this Agreement shall be understood and agreed by both Parties to this Agreement to be fair, equitable, adequate and complete. The changed compensation shall be understood and agreed to be the total of all costs associated with or impacted by the Supplemental Agreements including, but not limited to any and all direct costs, indirect costs and associated costs which may result from or be caused by the Supplemental Agreements, and shall be understood and agreed to include a fair, equitable and adequate adjustment to cover the CONSULTANT's general administrative and overhead costs and profit.

## 2.10 CHANGE ORDER

The term CHANGE ORDER shall refer to a written document, CHANGE ORDER AGREEMENT, executed by both parties to this Agreement setting forth and authorizing changes to the agreed upon Scope of Professional Services and Tasks, Compensation and Method of Payment, Time and Schedule of Performance, or Project Guidelines and Criteria as such were set forth and agreed to in the initial AGREEMENT, SUPPLEMENTAL AGREEMENTS, SUPPLEMENTAL TASK AUTHORIZATION(S), or previous CHANGE ORDERS issued thereto. The CHANGE ORDER document, which shall be executed on a Lee County standard form, shall set forth the authorized changes to the: scope of professional services, tasks, work or materials to be performed or provided by the CONSULTANT; the compensation and method of payment; the schedule or time period for performance and completion, and the guidelines, criteria and requirements pertaining thereto.

The amount of the change in contract compensation and time set forth in any and all Change Orders executed and issued under this Agreement shall be understood and agreed by both Parties to this Agreement to be fair, equitable, adequate and complete. The changed compensation shall be understood and agreed to be the total of all costs associated with or impacted by the Change Order including, but not limited to any and all direct costs, indirect costs and associated costs which may result from or be caused by the Change Order, and shall be understood and agreed to include a fair, equitable and adequate adjustment to cover the CONSULTANT's general administrative and overhead costs and profit.

In the event the County decides to delete all, or portions, of the Scope of Services, Task(s), or Requirements set forth in the initial Agreement, Supplemental Agreements, Supplemental Task Authorizations or previously authorized Change Orders, the COUNTY may do so by the unilateral issuance of a written Change Order to the CONSULTANT. Such a unilaterally issued Change Order shall set forth, if appropriate, (1) an agreement by both the COUNTY and the CONSULTANT establishing changes in the amount of compensation to be paid the CONSULTANT as a result of the deletion or decrease in services required, or (2) in the absence of such an agreement concerning compensation, the unilaterally issued Change Order shall set forth the basis to be used in subsequently considering, and reaching agreement on change(s) in the compensation to be paid the CONSULTANT. The failure on the part of the CONSULTANT to execute a Change Order issued unilaterally by the COUNTY to effect a deletion or decrease in the services required shall have no effect on, or otherwise prevent the COUNTY from exercising its rights to direct the stated deletion or decrease in the services to be provided or performed by the CONSULTANT.

## 2.11 SUPPLEMENTAL TASK AUTHORIZATION

The term Supplemental Task Authorization as used refers to a written document executed by both parties to an existing Professional Services Agreement, or Service Provider Agreement, setting forth and authorizing a limited number of Professional Services, tasks, or work. Such Supplemental Task Authorizations are consistent with and have previously been included within the scope of services in the initial Professional Services Agreement, or Service Provider Agreement, for which authorization has not been previously given or budgeted.

## 2.12 WORK ORDER

The term WORK ORDER shall refer to the written document executed by both parties to this Agreement whereby the COUNTY provides authorization and notification to the CONSULTANT, and the CONSULTANT agrees, to proceed to provide or perform certain professional services, tasks or work for which the Scope of Services and Compensation to be paid the CONSULTANT were set forth and agreed to in the initial AGREEMENT, or other SUPPLEMENTAL AGREEMENTS or CHANGE ORDERS or SUPPLEMENTAL TASK AUTHORIZATIONS thereto, such professional services, tasks or work having previously been excluded and not included in written Notice(s) to Proceed issued by the COUNTY to the CONSULTANT. The WORK ORDER document, which shall be executed on a Lee County standard form, shall provide confirmation of the previously agreed to: scope of professional services, tasks, work or materials to be performed or provided by the CONSULTANT; the compensation and method of payment; the schedule or time period for performance and completion; and the guidelines, criteria and requirements pertaining thereto.

## 2.13 DEPARTMENT DIRECTOR

The term DEPARTMENT DIRECTOR shall refer to the Director of the Department requesting the service, employed by the Lee County Board of County Commissioners to serve and act on the COUNTY'S behalf, as it relates to this Project. The Chairman of the Board of County Commissioners, or his designated representative, shall act on behalf of the COUNTY to execute any and all SUPPLEMENTAL AGREEMENT(S) or CHANGE ORDER(S) or SUPPLEMENTAL TASK AUTHORIZATION(S) approved by the COUNTY and issued to the CONSULTANT pursuant to this Agreement. The DEPARTMENT DIRECTOR, within the authority conferred by the Board of County Commissioners, acting as the COUNTY'S designated representative shall issue written notification to the CONSULTANT of any and all changes approved by the COUNTY in the CONSULTANT'S: (1) compensation (2) time and/or schedule of service delivery; (3) scope of services; or other change(s) relative to BASIC SERVICES and ADDITIONAL SERVICES pursuant to this Agreement, or SUPPLEMENTAL AGREEMENT(S), WORK ORDER(S), or CHANGE ORDER(S) or SUPPLEMENTAL TASK AUTHORIZATION(S) pertaining thereto. The DEPARTMENT DIRECTOR shall be responsible for acting on the COUNTY'S behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Agreement, CHANGE ORDER(S), SUPPLEMENTAL AGREEMENT(S) or WORK ORDER(S) or SUPPLEMENTAL TASK AUTHORIZATION(S) issued thereunder.

## 2.14 PROJECT MANAGER

The term PROJECT MANAGER shall refer to the person employed or retained by the COUNTY and designated, in writing, to serve and act on the COUNTY'S behalf to provide direct contact and communication between the COUNTY and CONSULTANT with respect to providing information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the CONSULTANT pursuant to this Agreement and such written WORK ORDER(S), SUPPLEMENTAL AGREEMENT(S), SUPPLEMENTAL TASK AUTHORIZATION(S) and CHANGE ORDER(S) as are authorized. The PROJECT MANAGER is not authorized to, and shall not, issue any verbal, or written, request or instruction to the CONSULTANT that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) Scope of Services to be provided and performed by the CONSULTANT; (2) The time the CONSULTANT is obligated to commence and complete all such services; (3) The amount of compensation the COUNTY is obligated or committed to pay the CONSULTANT. The PROJECT MANAGER shall review and make appropriate recommendations on all requests submitted by the CONSULTANT for payment for services and work provided and performed, and reimbursable costs and expense, as provided for in this Agreement and approved WORK ORDER(S), SUPPLEMENTAL AGREEMENT(S), CHANGE ORDER(S), SUPPLEMENTAL TASK AUTHORIZATION(S) thereto.

## 2.15 LUMP SUM FEE(S)

Lump Sum Fee(s), hereinafter identified as L.S., are understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant as may be required and/or necessary to complete each and every task set forth in the Scope of Professional Services, Exhibit "A", or as may be set forth in subsequent Work Orders, Supplemental Agreements, Supplemental Task Authorizations, and/or Change Orders agreed to in writing by both parties to this Agreement.

## 2.16 NOT-TO-EXCEED FEE(S)

When all, or any portion, of the CONSULTANT'S compensation to provide and perform the services and work necessary and required pursuant to the Tasks set forth in Agreement Exhibit "A", and any Supplemental Agreements, Change Orders, Supplemental Task Authorizations, and Work Orders authorized thereto, is established to be made on a NOT-TO-EXCEED (N.T.E.) amount basis, it is mutually understood and agreed that such compensation for each completed Task shall be made on the following basis:

For the actual hours necessary, required and expended by the CONSULTANT'S professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in Attachment No. 1 to Exhibit "B" to the above referenced Agreement and any Supplemental Agreements or Change Orders or Supplemental Task Authorizations authorized thereto; and

For the actual necessary, required and expended non-personnel reimbursable expenses and costs, multiplied by the applicable "Basis of Charges" for each item as set forth in Attachment No. 2 to Exhibit "B" to the above referenced Agreement and any Supplemental Agreements or Change Orders or Supplemental Task Authorizations authorized thereto; and

For the actual, necessary and required hours, and non-personnel expenses and costs, expended by Sub-Consultants and SubContractors engaged by the CONSULTANT, multiplied by such hourly rates and unit costs as are agreed to by the COUNTY and the CONSULTANT and as are set forth as a part of the above referenced Agreement and any Supplemental Agreements or Change Orders or Supplemental Task Authorizations authorized thereto; and

With the understanding and agreement that the COUNTY shall pay the CONSULTANT for all such costs and expenses within the established Not-to-Exceed amount for each Task or Sub-Task subject to the CONSULTANT presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the COUNTY covering all such costs and expenses; and

With the understanding and agreement that the CONSULTANT'S invoices and all payments to be made for all Not-to-Exceed amounts shall be subject to the review, acceptance and approval of the COUNTY; and

With the understanding and agreement that when the CONSULTANT'S compensation is established on a Not-to-Exceed basis for a specific Task(s) or Sub-Task(s) the total amount of compensation to be paid the CONSULTANT to cover all personnel costs, non-personnel reimbursable expenses and costs, and Sub-Consultant and SubContractor costs for any such specific Task(s) or Sub-Task(s) shall not exceed the amount of the total Not-to-Exceed compensation established and agreed to for each specific Task(s) or Sub-Task(s). In the event the amount of compensation for any Task(s) or Sub-Task(s) to which the CONSULTANT is entitled on the Not-to-Exceed basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the Not-to-Exceed amount established for the specific Task or Sub-Task, it is understood and agreed that any unexpended amount under a specific Task or Sub-Task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other Task(s) or Sub-Task(s).

### **ARTICLE 3.00 - OBLIGATIONS OF THE CONSULTANT**

The obligations of the CONSULTANT with respect to all the BASIC SERVICES and ADDITIONAL SERVICES authorized pursuant to this Agreement shall include, but not be limited to, the following:

### 3.01 LICENSES

The CONSULTANT agrees to obtain and maintain throughout the period this Agreement is in effect all such licenses as are required to do business in the State of Florida and in Lee County, Florida, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the CONSULTANT pursuant to this Agreement.

### 3.02 PERSONNEL

#### (1) QUALIFIED PERSONNEL

The CONSULTANT agrees when the services to be provided and performed relate to a professional service(s) which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, to employ and/or retain only qualified personnel to be in responsible charge of all BASIC SERVICES and ADDITIONAL SERVICES to be provided pursuant to this Agreement.

#### (2) CONSULTANT'S PROJECT DIRECTOR

The CONSULTANT agrees to employ and designate, in writing, a qualified and, if required by law, a licensed professional to serve as the CONSULTANT'S Project Director. The CONSULTANT'S Project Director shall be authorized and responsible to act on behalf of the CONSULTANT with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement thereto. The CONSULTANT'S Project Director shall have full authority to bind and obligate the CONSULTANT on any matter arising under this Agreement unless substitute arrangements have been furnished to the COUNTY in writing. The CONSULTANT agrees that the Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the CONSULTANT throughout the entire period this Agreement is in effect. The person selected by the CONSULTANT to serve as the CONSULTANT'S Project Director shall be subject to the prior approval and acceptance of the COUNTY.

#### (3) REMOVAL OF PERSONNEL

The CONSULTANT agrees, within thirty (30) calendar days of receipt of a written request from the COUNTY, to promptly remove and replace the CONSULTANT'S Project Director, or any other personnel employed or retained by the CONSULTANT, or personnel of the sub-consultant(s) or subcontractor(s) engaged by the CONSULTANT to provide and/or perform services and/or work pursuant to the requirements of this Agreement, who the COUNTY shall request, in writing, be removed, which request may be made by the COUNTY with or without cause.

### 3.03 TIMELY ACCOMPLISHMENT OF SERVICES

The timely performance and completion of the required services, work and materials is vitally important to the interests of the COUNTY. Time is of the essence for all of the duties and obligations contained in this Agreement thereto. The COUNTY may suffer damages in the event that the CONSULTANT does not accomplish and complete the required services in a timely manner. The CONSULTANT agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all BASIC SERVICES and ADDITIONAL SERVICES will be provided, performed and completed in a timely and diligent manner throughout.

### 3.04 STANDARDS OF PROFESSIONAL SERVICE

The work and/or services to be provided and/or performed by the CONSULTANT and by any Sub-Consultant(s) and/or SubContractor(s) engaged by the CONSULTANT as set forth in the Scope of Professional Services, Exhibit "A", shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the COUNTY approves this Agreement, or which may subsequently be changed or revised. Any subsequent change or revision to such laws, rules, regulations, ordinances, codes, policies, standards or other guidelines which requires the CONSULTANT to provide and/or perform work and/or services which are significantly different from that set forth in the Scope of Professional Services, Exhibit "A", shall serve as a basis for the COUNTY to consider the development and issuance of a Change Order to provide for a change to, or Additional Services to the services set forth in the Agreement.

### 3.05 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

#### (1) RESPONSIBILITY TO CORRECT

The CONSULTANT agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by CONSULTANT or by any sub-consultant(s) and/or subcontractor(s) retained or engaged by the CONSULTANT pursuant to this Agreement. The CONSULTANT shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of CONSULTANT or any sub-consultant(s) or subcontractor(s) engaged by the CONSULTANT.

(2) COUNTY'S APPROVAL SHALL NOT RELIEVE CONSULTANT OF RESPONSIBILITY

Neither review, approval, or acceptance by the COUNTY of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and incidental professional services, work and materials furnished hereunder by the CONSULTANT, or any sub-consultant(s) or subcontractor(s) engaged by the CONSULTANT, shall in any way relieve CONSULTANT of responsibility for the adequacy, completeness and accuracy of its services, work and materials and the services, work and materials of any and all sub-consultants and/or subcontractors engaged by the CONSULTANT to provide and perform services in connection with this Agreement. Neither the COUNTY'S review, approval or acceptance of, nor payment for, any of the CONSULTANT'S services, work and materials shall be construed to operate as a waiver of any of the COUNTY'S rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

3.06 LIABILITY

(1) CONSULTANT TO HOLD COUNTY HARMLESS

The CONSULTANT shall be liable and agrees to be liable for and shall indemnify and hold the COUNTY harmless for any and all claims, suits, judgements or damages, losses and expenses including court costs and attorney's fees arising out of the CONSULTANT'S errors, omissions, and/or negligence, or those of any and all sub-consultants and/or subcontractors engaged by the CONSULTANT during the providing, performing and furnishing of services, work and materials pursuant to this Agreement and any and all Supplemental Agreements, Change Orders, Supplemental Task Authorizations thereto. The CONSULTANT shall not be liable to nor indemnify the COUNTY for any portions of damages arising out of any error, omission, and/or negligence of the COUNTY, its employees, agents, or representatives or third parties. The CONSULTANT hereby acknowledges that the compensation to be paid the CONSULTANT by the COUNTY as set forth in Agreement Exhibit "B" entitled "COMPENSATION AND METHOD OF PAYMENT" includes compensation as consideration for the indemnification provided herein.

3.07 NOT TO DIVULGE CERTAIN INFORMATION

CONSULTANT agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without COUNTY'S prior written consent, or unless incident to the proper performance of CONSULTANT'S obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by CONSULTANT or any sub-consultant(s) or subcontractor(s) pursuant to this Agreement. CONSULTANT shall require all of its employees, sub-consultant(s) and subcontractor(s) to comply with the provisions of this paragraph.

### 3.08 CONSULTANT TO REPAIR PROPERTY DAMAGE CAUSED BY THE CONSULTANT

CONSULTANT agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expense and in a manner acceptable to and approved by the COUNTY, any property damage arising out of, or caused by, the willful or negligent acts of the CONSULTANT, or of its sub-consultants and/or subcontractors. This CONSULTANT'S obligation under this sub-article does not apply to property damage caused by any other Consultant or Contractor engaged directly by the COUNTY.

The COUNTY reserves the right, should the CONSULTANT fail to make such repairs and/or replacement within a reasonable period of time, to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the CONSULTANT, or by the CONSULTANT reimbursing the COUNTY for all such costs and expenses.

### 3.09 RESPONSIBILITY FOR ESTIMATES

In the event the services required pursuant to this Agreement include the CONSULTANT preparing and submitting to the COUNTY, cost estimates, the CONSULTANT, by exercise of his experience, effort, knowledge and judgment, shall develop such cost estimates as are set forth in, or as may be required under the Agreement and shall be held accountable, responsible and liable for the accuracy, completeness, and correctness of any and all such cost estimates. For purposes of the Liability Provisions of this Article only, the CONSULTANT'S estimate(s) shall be considered valid and effective for a period of six (6) months from the date of the COUNTY'S acceptance of the estimate(s).

The cost estimates of CONSULTANTS or SUB-CONSULTANTS engaged by CONSULTANTS, for the appraisal or valuation of property or easements, or the estimate of damages or costs associated with the acquisition of property or easements are exempted from the provisions of Article 3.09.

#### (1) Cost Estimates

##### (A) ORDER OF MAGNITUDE ESTIMATE

This is an approximate estimate made without detailed architect/engineering data. Examples include, but are not limited to, an estimate from cost-capacity curves, an estimate using scale-up or scale-down factors, and an approximate ratio estimate. This type of estimate shall be accurate within plus fifty percent (50.0%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the ORDER OF MAGNITUDE ESTIMATE shall be recoverable by the COUNTY.

(B) BUDGET ESTIMATE

Budget in this case applies to the COUNTY'S budget and not to the budget as a project controlled document. A budget is prepared with the use of flowsheets, layouts, and equipment details. This type of estimate shall be accurate within plus twenty-five percent (25.0%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the BUDGET ESTIMATE shall be recoverable by the COUNTY.

(C) CONSTRUCTION COST ESTIMATE.

A construction cost estimate for purposes of this Agreement is an estimate prepared on the basis of well defined engineering/architectural data and on detailed information set forth in specifications, designs or drawings which are to be used as a basis for obtaining bids or price proposals for constructing the project. This type of estimate shall be accurate within plus or minus ten percent (10%) of the cost of the construction of the project. The accuracy and reliability of a CONSTRUCTION COST ESTIMATE is vital to the COUNTY'S interests because it may be used for such purposes as, but not limited to the following; budgeting, obtaining, allocating or obligating funds for the project; evaluating and determining the reasonableness and acceptableness of bids or price proposals for construction projects; or establishing the assessment amounts for Municipal Service Benefit Units (M.S.B.U.).

In the event the COUNTY solicits and receives bids or price proposals from contractors on a construction project based on specifications, design, drawings and a CONSTRUCTION COST ESTIMATE prepared by the CONSULTANT, and the lowest bid or price proposal, submitted by a responsive and responsible bidder or proposer, which bid or price proposal exceeds the amount of the CONSULTANT'S CONSTRUCTION COST ESTIMATE by more than the percent accuracy set forth hereinabove, the CONSULTANT shall, upon notification by the COUNTY, assume responsibility for and proceed to provide and perform the following service without additional compensation:

The CONSULTANT will, subject to the review and approval of the COUNTY, modify at its expense the specifications, design, drawings and related bidding and contract documents to the extent necessary to reduce the anticipated construction costs so that the re-solicitation of bids or price proposals will realize bids or price proposals being received that are within the range of accuracy established for the CONSTRUCTION COST ESTIMATE prepared by the CONSULTANT. Any such modifications made by the CONSULTANT shall not conflict with the functional or operational requirements established by the COUNTY for the project and set forth in the Agreement or Supplemental Agreement(s) or Change Order(s) or Supplemental Task Authorization(s) issued thereto, nor shall any such modifications conflict with established rules, regulations, requirements or professional standards pertaining to the design, specifications or drawings prepared by the CONSULTANT, nor shall such modifications adversely affect the safe use or operation of the constructed project.

(C) CONSTRUCTION COST ESTIMATE. (Continued)

In the event (1) the CONSULTANT's modification of the design, specifications, drawings and related bidding and contract documents, and (2) the re-solicitation of bids or price proposals do not result in bids or price proposals being received from a responsive and responsible bidder or proposer that are within the established percent accuracy of the CONSULTANT'S CONSTRUCTION COST ESTIMATE, the costs associated with the CONSULTANT's preparation and development of the CONSTRUCTION

COST ESTIMATE shall be recoverable by the COUNTY by an appropriate reduction in the CONSULTANT'S invoice requesting payment for services rendered.

For determination of compliance with the accuracy requirement established for the CONSTRUCTION COST ESTIMATE prepared by the CONSULTANT, the amount of the CONSTRUCTION COST ESTIMATE submitted by the CONSULTANT shall be adjusted from the date the CONSTRUCTION COST ESTIMATE was received by the COUNTY until the date bids or price proposals are received by the COUNTY, by applying the percent change in the "20 Cities Cost Index" as published in the ENR (formerly ENGINEERING NEWS-RECORD) a McGraw-Hill, Inc. publication.

If, in response to its solicitation, the COUNTY receives less than three bids or priced proposals for a project, there is the potential that such bids or priced proposals may not be a realistic representation of the costs expected to be associated with the project. If under such circumstances, and if in the professional judgment of the CONSULTANT, the low bid or the low priced proposal received from a responsive bidder or proposer does not realistically represent the costs associated with the project, the CONSULTANT may deem it appropriate to recommend the COUNTY reject any such bid(s) or priced proposal(s). If under such circumstances the COUNTY concurs with the CONSULTANT'S recommendation and rejects the bid(s) or priced proposal(s), the COUNTY will not hold the CONSULTANT responsible to, nor will the COUNTY require the CONSULTANT to, modify the specifications, design, drawings and related bidding and contract documents as set forth hereinbefore.

### 3.10 PERMITS

The CONSULTANT will be responsible for preparing and submitting all required applications and other supportive information necessary to assist the COUNTY in obtaining all reviews, approvals and permits, with respect to the CONSULTANT'S design, drawings and specifications required by any governmental body having authority over the project. Any fees required for such reviews, approvals or permits will be covered by a check issued by the COUNTY and made payable to the respective governmental body upon the CONSULTANT furnishing the COUNTY satisfactory documentation of such fees. The CONSULTANT will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the COUNTY in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The COUNTY shall, at the CONSULTANT'S request, assist in obtaining required signatures and provide the CONSULTANT with all information known to be available to the COUNTY so as to assist the CONSULTANT in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

### 3.11 ADDITIONAL SERVICES

Should the COUNTY request the CONSULTANT to provide and perform professional services for this project which are not set forth in EXHIBIT "A", the CONSULTANT agrees to provide and perform such ADDITIONAL SERVICES as may be agreed to in writing by both parties to this Agreement.

Such ADDITIONAL SERVICES shall constitute a continuation of the professional services covered under this Agreement and shall be provided and performed in accordance with the covenants, terms, and provisions set forth in this Agreement thereto.

ADDITIONAL SERVICES shall be administered and authorized as "SUPPLEMENTAL AGREEMENTS", "SUPPLEMENTAL TASK AUTHORIZATIONS" or "CHANGE ORDERS" under the Agreement. The CONSULTANT shall not provide or perform, nor shall the COUNTY incur or accept any obligation to compensate the CONSULTANT for any ADDITIONAL SERVICES unless and until a written "SUPPLEMENTAL AGREEMENT", "SUPPLEMENTAL TASK AUTHORIZATIONS" or "CHANGE ORDER" shall have been agreed to and executed by both parties.

Each such "SUPPLEMENTAL AGREEMENT", "SUPPLEMENTAL TASK AUTHORIZATION" or "CHANGE ORDER" shall set forth a comprehensive, detailed description of: (1) the Scope of the ADDITIONAL SERVICES requested; (2) the basis of compensation; and (3) the period of time and/or schedule for performing and completing said ADDITIONAL SERVICES.

### 3.12 TRUTH-IN-NEGOTIATIONS CERTIFICATE

The COUNTY may request the CONSULTANT to execute a Truth-in-Negotiations Certificate ("Certificate"), in a form attached as EXHIBIT "F". The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the COUNTY determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates or other factual unit costs.

### 3.13 COMPLETION OF TASKS

Unless otherwise set forth in the Agreement the CONSULTANT shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in Agreement Exhibit "A" entitled "Scope of Professional Services" and Supplemental Agreements, Change Orders, Supplemental Task Authorizations and Work Orders authorized. The compensation to be paid the CONSULTANT as set forth in Agreement Exhibit "B" entitled "Compensation and Method of Payment" and Supplemental Agreements, Change Orders, Supplemental Task Authorizations, and Work Orders authorized thereto shall be understood and agreed to adequately and completely compensate the CONSULTANT for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in Agreement Exhibit "A" and Supplemental Agreements, Change Orders, Supplemental Task Authorizations, and Work Orders authorized thereto as stated above."

### 3.14 AFFIRMATIVE ACTION BY CONSULTANT WHEN ENGAGING SUB-CONSULTANTS

Florida Statute #287.042(4)(f) establishes that agencies, including Lee County, are encouraged to spend twenty-five (25%) percent of the monies actually spent for contractual services for the purpose of entering into contracts with certified Minority Business Enterprises. Accordingly, the CONSULTANT is encouraged, when selecting or engaging the services of sub-consultants or subcontractors pursuant to this Agreement, to spend twenty-five (25%) percent of the amount of compensation established in this Agreement and in subsequent SUPPLEMENTAL AGREEMENTS, CHANGE ORDERS, SUPPLEMENTAL TASK AUTHORIZATIONS, and WORK ORDERS authorized thereto for the engagement of the services of certified Minority Business Enterprise sub-consultants or subcontractors.

In furtherance of this statutory goal the COUNTY expects the CONSULTANT to take affirmative action towards achieving this goal. "Affirmative Action" as used herein shall constitute a good faith effort by the CONSULTANT to achieve the stated goal of engaging certified Minority Business Enterprise sub-consultants or subcontractors to provide or perform services and/or work pursuant to the SCOPE OF SERVICES required under this Agreement. Efforts taken by the CONSULTANT to assist the COUNTY in meeting this statutory goal must be documented in detail, records of sub-consultants or subcontractors contacted maintained, including negotiation efforts, and written Agreements maintained for services or work awarded to sub-consultants or subcontractors.

The CONSULTANT, upon receipt of a written request by the COUNTY, shall within ten (10) calendar days thereafter submit to the COUNTY copies of records and supporting documentation to show evidence of its affirmative action efforts to achieve the above stated goal.

The CONSULTANT is encouraged to contact the Lee County Department of Equal Opportunity for information and assistance regarding the COUNTY'S Minority Business Enterprise certification program and listing of certified Minority Business Enterprises.

## **ARTICLE 4.00 - OBLIGATIONS OF THE COUNTY**

### **4.01 DESIGNATION OF PROJECT MANAGER**

The COUNTY agrees after the execution of this Agreement to promptly advise the CONSULTANT, in writing, of the person designated to serve and act as the COUNTY'S PROJECT MANAGER pursuant to the provisions of Article 2.13 of this Agreement. Such notification shall be provided to the CONSULTANT by the COUNTY'S DEPARTMENT DIRECTOR.

### **4.02 AVAILABILITY OF COUNTY INFORMATION**

#### **(1) PROJECT GUIDELINES AND CRITERIA**

Guidelines to the CONSULTANT regarding requirements the COUNTY has established or suggests relative to the Project including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria are set forth in EXHIBIT "E", entitled "PROJECT GUIDELINES AND CRITERIA", which EXHIBIT "E" is attached hereto and made a part of this Agreement.

#### **(2) COUNTY TO PROVIDE PERTINENT REFERENCE MATERIAL**

At the CONSULTANT'S request, the COUNTY agrees to provide to the CONSULTANT, at no cost to the CONSULTANT, all pertinent information known to be available to the COUNTY to assist the CONSULTANT in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the COUNTY such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

### **4.03 AVAILABILITY OF COUNTY'S DESIGNATED REPRESENTATIVES**

The COUNTY agrees that the DEPARTMENT DIRECTOR and the PROJECT MANAGER shall be available within a reasonable period of time, with reasonable prior notice given by the CONSULTANT, to meet and/or consult with the CONSULTANT on matters pertaining to the services to be provided and performed by the CONSULTANT. The COUNTY further agrees to respond within a reasonable period of time to written requests submitted by the CONSULTANT.

#### 4.04 ACCESS TO COUNTY PROPERTY

The COUNTY agrees, with reasonable prior written notice given by the CONSULTANT, to provide the CONSULTANT with access within a reasonable period of time to COUNTY property, facilities, buildings and structures to enable the CONSULTANT to provide and perform the required professional services and work pursuant to this Agreement. Such rights of access shall not be exercised in such a manner or to such an extent as to impede or interfere with COUNTY operations, or the operations carried on by others under a lease, or other contractual arrangement with the COUNTY, or in such a manner as to adversely affect the public health and safety. Such access may, or may not be, within the CONSULTANT'S normal office and/or field work days and/or work hours.

### **ARTICLE 5.00 - COMPENSATION AND METHOD OF PAYMENT**

#### 5.01 BASIC SERVICES

The COUNTY shall pay the CONSULTANT for all requested and authorized BASIC SERVICES rendered hereunder by the CONSULTANT and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the COUNTY in accordance with the provisions for compensation and payment of said BASIC SERVICES set forth and prescribed in EXHIBIT "B", entitled "COMPENSATION AND METHOD OF PAYMENT", which EXHIBIT "B" is attached hereto and made a part of this Agreement, or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement as evidenced by a written Supplemental Agreement or Change Order executed by both parties.

#### 5.02 ADDITIONAL SERVICES

The COUNTY shall pay the CONSULTANT for all such ADDITIONAL SERVICES as have been requested and authorized by the COUNTY and agreed to, in writing, by both parties to this Agreement and which have been rendered as ADDITIONAL SERVICES by the CONSULTANT and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the COUNTY in accordance with the provisions for compensation and payment of said ADDITIONAL SERVICES as set forth and prescribed in EXHIBIT "B", entitled "COMPENSATION AND METHOD OF PAYMENT", which EXHIBIT "B" is attached hereto and made a part of this Agreement, or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement as evidenced by a written Supplemental Agreement or Change Order or Supplemental Task Authorization executed by both parties.

## 5.03 METHOD OF PAYMENT

### (1) MONTHLY STATEMENTS

The CONSULTANT shall be entitled to submit not more than one invoice statement to the COUNTY each calendar month covering services rendered during the preceding calendar month. The CONSULTANT'S invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement, or SUPPLEMENTAL AGREEMENT(S), CHANGE ORDER(S), SUPPLEMENTAL TASK AUTHORIZATION(S), and/or WORK ORDER(S) thereunder. The CONSULTANT'S invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in the Agreement, or in SUPPLEMENTAL AGREEMENT(S), CHANGE ORDER(S), SUPPLEMENTAL TASK AUTHORIZATION(S) and/or WORK ORDER(S) thereunder.

### (2) PAYMENT FOR SERVICES PERFORMED

The COUNTY shall pay the CONSULTANT for services performed using either of the following methods, or using a combination thereof:

(A) The COUNTY shall pay the CONSULTANT on the basis of services completed for tasks set forth in Exhibits "A" and "B", as evidenced by work products such as reports, drawings, specifications, etc., submitted by the CONSULTANT and accepted by the COUNTY. No payments shall be made for CONSULTANT's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the CONSULTANT and accepted by the COUNTY. Whenever an invoice statement covers services for which no work product is required to be furnished by the CONSULTANT to the COUNTY, the COUNTY reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

(B) The COUNTY shall pay the CONSULTANT for services performed for tasks set forth in Exhibits "A" and "B" on the basis of an invoice statement covering CONSULTANT'S Work-in-Progress expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages are subject to the review and approval of the COUNTY. The decision of the COUNTY shall be final as to the Work-in-Progress percentages paid. Payment by the COUNTY for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the COUNTY of any such service or Work-in-Progress. The CONSULTANT shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in Exhibit "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The COUNTY reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

### (3) PAYMENT SCHEDULE

The COUNTY shall issue payment to the CONSULTANT within thirty (30) calendar days after receipt of an invoice statement from the CONSULTANT in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the COUNTY object or take exception to the amount of any CONSULTANT'S invoice statement, the COUNTY shall notify the CONSULTANT of such objection or exception within the thirty (30) calendar day payment period set forth hereinbefore. If such objection or exception remains unresolved at the end of said thirty (30) calendar day period, the COUNTY shall withhold the disputed amount and make payment to the CONSULTANT of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

#### 5.04 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE COUNTY

In the event of termination of this Agreement at the convenience of the COUNTY, not at the fault of the CONSULTANT, the COUNTY shall compensate the CONSULTANT only for: (1) all services performed prior to the effective date of termination; (2) reimbursable expenses then due; and (3) reasonable expenses incurred by the CONSULTANT in affecting the termination of services and work, and incurred by the submittal to the COUNTY of project drawings, plans, data, and other project documents.

#### 5.05 PAYMENT WHEN SERVICES ARE SUSPENDED

In the event the COUNTY suspends the CONSULTANT'S services and work on all or part of the services required to be provided and performed by the CONSULTANT pursuant to this Agreement, the COUNTY shall compensate the CONSULTANT only for the services performed prior to the effective date of suspension and reimbursable expenses then due and any reasonable expenses incurred or associated with, or as a result of such suspension.

#### 5.06 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE

In the event the services required pursuant to this Agreement are terminated, eliminated, canceled, or decreased due to: (1) termination; (2) suspension in whole or in part; and (3) and/or are modified by the subsequent issuance of SUPPLEMENTAL AGREEMENT(S), SUPPLEMENTAL TASK AUTHORIZATION(S) and/or CHANGE ORDER(S), other than receiving the compensation set forth in Sub-Articles 5.04 and 5.05, the CONSULTANT shall not be entitled to receive compensation for anticipated professional fees, profit, general and administrative overhead expenses or for any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, canceled or decreased.

## **ARTICLE 6.00 - TIME AND SCHEDULE OF PERFORMANCE**

### **6.01 NOTICE TO PROCEED**

Following the execution of this Agreement by both parties, and after the CONSULTANT has complied with the insurance requirements set forth hereinafter, the COUNTY shall issue the CONSULTANT a WRITTEN NOTICE TO PROCEED. Following the issuance of such NOTICE TO PROCEED the CONSULTANT shall be authorized to commence work and the CONSULTANT thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion.

### **6.02 TIME OF PERFORMANCE**

The CONSULTANT agrees to complete the services required pursuant to this Agreement within the time period(s) for completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in EXHIBIT "C", entitled "SCHEDULE OF PERFORMANCE, which EXHIBIT "C" is attached hereto and made a part of this Agreement.

Should the CONSULTANT be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the CONSULTANT, or its sub-consultant(s) and/or subcontractor(s), and not due to their fault or neglect, the CONSULTANT shall notify the COUNTY, in writing, within five (5) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the CONSULTANT'S time of performance. Upon receipt of the CONSULTANT'S request for an extension of time, the COUNTY shall grant the extension if the COUNTY determines the delay(s) encountered by the CONSULTANT, or its sub-consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.

### **6.03 CONSULTANT WORK SCHEDULE**

The CONSULTANT shall be required as a condition of this Agreement to prepare and submit to the COUNTY, on a monthly basis, commencing with the issuance of the NOTICE TO PROCEED, a CONSULTANT'S WORK SCHEDULE. The WORK SCHEDULE shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work required completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in EXHIBIT "C", pursuant to this Agreement in such a manner that the CONSULTANT'S planned and actual work progress can be readily determined. The CONSULTANT'S WORK SCHEDULE of planned and actual work progress shall be updated and submitted by the CONSULTANT to the COUNTY on a monthly basis.

#### 6.04 FAILURE TO PERFORM IN A TIMELY MANNER

Should the CONSULTANT fail to commence, provide, perform and/or complete any of the services and work required pursuant to this Agreement in a timely and diligent manner, the COUNTY may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the COUNTY at its option, may, upon written notice to the CONSULTANT, withhold any or all payments due and owing to the CONSULTANT, not to exceed the amount of the compensation for the work in dispute, until such time as the CONSULTANT resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any WORK ORDER(S), SUPPLEMENTAL AGREEMENT(S), CHANGE ORDER(S), SUPPLEMENTAL TASK AUTHORIZATION(S) issued thereto.

#### ARTICLE 7.00 - SECURING AGREEMENT

The CONSULTANT warrants that the CONSULTANT has not employed or retained any company or person other than a bona fide, regular, full time employee working for the CONSULTANT to solicit or secure this Agreement and that the CONSULTANT has not paid or agreed to pay any person, company, corporation or firm other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

#### ARTICLE 8.00 - CONFLICT OF INTEREST

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The CONSULTANT further agrees that no person having any such interest shall be employed or engaged by the CONSULTANT for said performance.

If CONSULTANT, for itself and on behalf of its subconsultants, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by CONSULTANT or such sub-consultant under this Agreement, then it will promptly bring such potential conflict of interest to the COUNTY'S attention, in writing. The COUNTY will advise the CONSULTANT, in writing, within ten (10) calendar days as to the period of time required by the COUNTY to determine if such a conflict of interest exists. If the COUNTY determines that there is a conflict of interest, CONSULTANT or such sub-consultant shall decline the representation upon written notice by the COUNTY.

If the COUNTY determines that there is not such conflict of interest, then the COUNTY shall give its written consent to such representation. If CONSULTANT or sub-consultant accepts such a representation without obtaining the COUNTY'S prior written consent, and if the COUNTY subsequently determines that there is a conflict of interest between such representation and the work being performed by CONSULTANT or such sub-consultant under this Agreement, then the CONSULTANT or such sub-consultant agrees to promptly terminate such representation. CONSULTANT shall require each of such sub-consultants to comply with the provisions of this Section.

Should the CONSULTANT fail to advise or notify the COUNTY as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the CONSULTANT fail to discontinue such representation, the COUNTY may consider such failure as justifiable cause to terminate this Agreement.

#### **ARTICLE 9.00 - ASSIGNMENT, TRANSFER AND SUBCONTRACTS**

The CONSULTANT shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of CONSULTANT with a third party; or (2) the disestablishment of the CONSULTANT'S professional practice and the establishment of a successor consultant, or consulting organization. Nor shall the CONSULTANT subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement thereto, without prior written approval of the COUNTY. The CONSULTANT shall have the right, subject to the COUNTY'S prior written approval, to employ other persons and/or firms to serve as sub-consultants and/or subcontractors to CONSULTANT in connection with CONSULTANT providing and performing services and work pursuant to the requirements of this Agreement. The COUNTY shall have the right and be entitled to withhold such approval. Such approval shall not be unreasonably withheld.

In providing and performing the services and work required pursuant to this Agreement, CONSULTANT intends to engage the assistance of the sub-consultant(s) and/or subcontractor(s) set forth in EXHIBIT "D", entitled "CONSULTANT'S ASSOCIATED SUB-CONSULTANTS AND SUBCONTRACTORS", which EXHIBIT "D" is attached hereto and made a part of this Agreement.

#### **ARTICLE 10.00 - APPLICABLE LAW**

Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, or the laws, rules, and regulations of the United States when providing services funded by the United States government.

#### **ARTICLE 11.00 - COVENANTS AGAINST DISCRIMINATION**

##### **11.01 FOR PROJECTS WITH FUNDS APPROPRIATED FROM GENERAL LEE COUNTY REVENUES**

The CONSULTANT for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to COUNTY hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The CONSULTANT shall comply with Lee County's Affirmative Action Plan or state laws in the hiring of sub-consultants. CONSULTANTS who are uncertain of their obligation must obtain a copy of all relevant guidelines concerning Lee County's Affirmative Action Plan from the Lee County Department of Equal Opportunity.

## 11.02 FOR PROJECTS WITH FUNDS APPROPRIATED EITHER IN PART OR WHOLLY FROM FEDERAL OR STATE SOURCES

The CONSULTANT for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to COUNTY hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The CONSULTANT shall make every effort to comply with any Disadvantaged Business Enterprise goals which have been established for this project. CONSULTANTS who are uncertain of their obligations regarding Disadvantaged Business Enterprises for this project must obtain a copy of all relevant federal or state guidelines from the Lee County Department of Equal Opportunity. The failure of the CONSULTANT to adhere to relevant guidelines shall subject the CONSULTANT to any sanctions which may be imposed upon the COUNTY.

### ARTICLE 12.00 - WAIVER OF BREACH

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

### ARTICLE 13.00 - INSURANCE

#### 13.01 INSURANCE COVERAGE TO BE OBTAINED

(1) The CONSULTANT shall obtain and maintain such insurance as will protect him from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of his employees including claims insured by usual personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees including claims insured by usual personal injury liability coverage; and (4) from claims for injury to or destruction of tangible property including loss or use resulting therefrom; any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of this Agreement, whether such services, work and operations be by the CONSULTANT, its employees, or by any sub-consultant(s), subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.

(2) The insurance protection set forth hereinabove shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.

(3) The CONSULTANT, throughout the time this Agreement is in effect, shall require and ensure that any and all of its Sub-Consultants and/or SubContractors obtain, have, and maintain the insurance coverages required by law to be provided.

(4) The CONSULTANT shall obtain, have and maintain during the entire period of this Agreement all such insurance policies as are set forth and required herein.

(5) In the event that the CONSULTANT engages Sub-Consultants or SubContractors to assist the CONSULTANT in providing or performing services or work pursuant to the requirements of this Agreement, the insurance coverages required under Article 13.03 to be provided by the CONSULTANT shall cover all of the services or work to be provided or performed by all of the Sub-Consultants or SubContractors engaged by the CONSULTANT. However, in the event the services or work of Sub-Consultants or SubContractors engaged by the CONSULTANT is not covered by the CONSULTANT'S INSURANCE POLICY(s), it shall be the responsibility of the CONSULTANT to ensure that all Sub-Consultants or SubContractors have fully complied with the COUNTY insurance requirements for: (1) Worker's Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; or (4) Professional Liability as required and set forth in Agreement Article 13.00.

The services or work to be provided or performed by the following Sub-Consultant(s) or SubContractor(s) identified in Agreement Exhibit "D" are exempted and excluded from the Professional Liability insurance coverage requirements set forth in this Agreement:

Service and/or work to be Provided and/or Performed	Indicate Name of Individual or Firm
Engineering Environmental Evaluation Traffic Evaluation Contamination Screening	Pitman Hartenstein & Associates, Inc. Boylan Environmental Consultants CRSPE, Inc. Ardaman & Associates, Inc.

(6) The insurance coverage to be obtained by the CONSULTANT or by Sub-Consultants or SubContractors engaged by the CONSULTANT, as set forth in Agreement Article 13.03 for: (1) Workers' Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; or (4) Professional Liability is understood and agreed to cover any and all of the services or work set forth in Agreement Exhibit "A" and all subsequent Change Order(s), Supplemental Agreement(s), Work Assignment(s), Supplemental Task Authorization(s), or Work Order(s). In the event the COUNTY shall execute and issue a written Change Order(s), or Work Order(s) or Supplemental Task Authorization(s) authorizing the CONSULTANT to provide or perform services or work in addition to those set forth in Agreement Exhibit "A", it is agreed that the COUNTY has the right to change the amount of insurance coverages required to cover the additional services or work. If the additional insurance coverages established exceeds the amount of insurance coverage carried by the CONSULTANT, the compensation established for the Change Order(s), Supplemental Agreement(s), Work Assignment(s), Supplemental Task Authorization(s), or Work Order(s) shall include consideration of any increased premium cost incurred by the CONSULTANT to obtain same.

### 13.02 CONSULTANT REQUIRED TO FILE INSURANCE CERTIFICATE(S)

(1) The CONSULTANT shall submit to PUBLIC WORKS ADMINISTRATION, CONTRACTS MANAGEMENT all insurance certificates which are required under this Agreement for review and approval with respect to compliance with the insurance requirements. After approval the COUNTY will execute this Agreement and issue a written Notice to Proceed. The CONSULTANT may then commence with any service or work pursuant to the requirements of this Agreement.

(2) All such insurance certificates shall be in a form and underwritten by an insurance company(s) acceptable to the COUNTY and licensed in the State of Florida.

(3) Each Certificate of Insurance submitted to the COUNTY shall be an original and shall be executed by an authorized representative of the insurance company affording coverage.

(4) Each Certificate of Insurance shall be addressed to the Lee County Board of County Commissioners, Attention: Public Works Administration, Contracts Management, P O Box 398, Fort Myers, Florida 33902-0398.

(5) Each Certificate of Insurance shall specifically include all of the following:

(A) The name and type of policy and coverages provided; and

(B) The amount or limit applicable to each coverage provided and the deductible amount, if any, applicable to each type of insurance coverage being provided; and

(C) The date of expiration of coverage; and

(D) The designation of the Lee County Board of County Commissioners both as an additional insured and as a certificate holder. (This requirement is excepted for Professional Liability Insurance and for Workers' Compensation Insurance); and

(E) A specific reference to this Agreement and the Project to which it pertains. (This requirement may be excepted for Professional Liability Insurance); or

In the event the CONSULTANT has, or expects to enter into an agreement for professional services other than those provided for in this Agreement, the CONSULTANT may elect to submit a certificate of insurance containing the following statement:

"This policy covers the services or work provided or performed by the Named Insured for any and all projects undertaken for Lee County pursuant to one or more written Professional Services Agreements, or written Supplemental Agreements or Supplemental Task Authorizations, or Change Orders thereto, and the limit(s) of liability shown shall not be intended or construed as applying to only one project."

Upon receipt and approval of such a certificate of insurance the COUNTY will administer the insurance required for all such agreements utilizing the single "multi-project" certificate of insurance and a separate certificate of insurance will not be required for each separate agreement.

(F) The following clause must appear on the Certificate of Insurance:

"Cancellation - Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the Certificate Holder named."

(G) A statement indicating any services or work included in or required under Agreement Exhibit "A" Scope of Professional Services that is specifically excluded or exempted from coverage under the provisions, terms, conditions or endorsements of the CONSULTANT'S insurance policy(s). A statement which indicates any and all deductible amounts applicable to each type of insurance coverage required. In the absence of any such statements, the COUNTY will proceed with the understanding, stipulation and condition that there are no deductible amount(s), or exclusions or exemptions to the insurance coverage(s) provided.

(6) Each Certificate of Insurance shall be issued by an insurance agent and/or agency duly authorized to do so by and on behalf of the insurance company affording the insurance coverage(s) indicated on each Certificate of Insurance.

(7) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the work or termination of this Agreement, the CONSULTANT shall furnish to the COUNTY renewal or replacement Certificate(s) of Insurance, or Certified Binder(s), not later than fifteen (15) calendar days prior to the date of their expiration. Failure of the CONSULTANT to provide the COUNTY with such renewal certificate(s) shall be considered justification for the COUNTY to terminate this Agreement.

(8) If any of the insurance coverage(s) required by this Agreement shall reach the date of expiration indicated on the approved Certificate(s) of Insurance without the COUNTY having received satisfactory evidence of renewal or replacement, the CONSULTANT shall automatically and without further notice stop performing all previously authorized services and work. During any time period that the CONSULTANT'S services or work is suspended for failure to comply with the insurance requirements set forth in the Agreement, the CONSULTANT shall not be entitled to any additional compensation or time to provide and perform the required services or work and the COUNTY shall not be required to make payment on any invoices submitted by the CONSULTANT. Upon receipt and approval of renewal or replacement Certificates of Insurance, payment for any such invoices shall be made promptly by the COUNTY.

### 13.03 - INSURANCE COVERAGES REQUIRED

The CONSULTANT shall obtain and maintain the following insurance coverages as provided hereinbefore, and in the type, amounts and in conformance with the following minimum requirements:

#### (1) WORKERS' COMPENSATION

Coverage to comply for all employees for statutory limits in compliance with the applicable State and Federal laws. In addition, the policy must include the following:

(A) Employer's Liability with a minimum limit per accident in accordance with statutory requirements, or a minimum limit of \$100,000 for each accident, whichever limit is greater.

(B) Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the COUNTY with thirty (30) days prior written notice of cancellation and/or restriction.

#### (2) COMMERCIAL GENERAL LIABILITY

Coverage must be afforded on a form no more restrictive than the last edition of the Commercial General Liability Policy filed by the Insurance Services Office and must include the following:

(A) Minimum limits of \$100,000 per occurrence and \$300,000 aggregate for Bodily Injury Liability and a minimum limit of \$100,000 for Property Damage Liability, or a minimum combined single limit of \$300,000.

(B) Contractual coverage applicable to this specific Agreement including any hold harmless and/or such indemnification agreement.

(C) Such additional requirements as are set forth in Article 13.01 and 13.02 hereinabove.

#### (3) BUSINESS AUTOMOBILE LIABILITY

Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy filed by the Insurance Services Office and must include the following:

(A) Minimum limits of \$100,000 per person and \$300,000 per accident for Bodily Injury Liability and a minimum limit of \$100,000 for Property Damage Liability, or a minimum combined single limit of \$300,000.

(B) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

(C) Such additional requirements as are set forth in Articles 13.01 and 13.02 hereinabove.

(4) PROFESSIONAL LIABILITY

Coverage must include the following:

(A) A minimum aggregate limit of \$1,000,000.00.

(B) Such additional requirements as are set forth in Articles 13.01 and 13.02 hereinabove.

(C) Should the Professional Liability Insurance Policy issued pursuant to the above requirements and limits be written so as to provide an applicable deductible amount, or other exclusion or limitation as to the amount of coverage to be provided within the minimum coverage limits set forth above, the COUNTY shall hold the CONSULTANT responsible and liable for any such difference in the amount of coverage provided by the insurance policy. In the event of any such deductible amount, exclusion or limitation, the CONSULTANT shall be required to provide written documentation that is acceptable to the COUNTY establishing that the CONSULTANT has the financial resources readily available to cover damages, injuries and/or losses which are not covered by the policy's deductible amounts, exclusions and/or limitations as stated above.

**ARTICLE 14.00 - DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT**

The duties and obligations imposed upon the CONSULTANT by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

**ARTICLE 15.00 - REPRESENTATION OF THE COUNTY**

The CONSULTANT in providing and performing the services and work required pursuant to this Agreement thereto shall only represent the COUNTY in the manner and to the extent specifically set forth in writing in this Agreement or thereto, and as provided in any written WORK ORDER(S), SUPPLEMENTAL AGREEMENT(S), SUPPLEMENTAL TASK AUTHORIZATION(S), and CHANGE ORDER(S) issued thereunder.

In the event the CONSULTANT'S services or work involves construction contract administrative support services, the CONSULTANT is not authorized to act on the COUNTY'S behalf, and shall not act on the COUNTY'S behalf, in such a manner as to result in change(s) to (1) the cost or compensation to be paid the construction contractor, or (2) the time for completing the work as required and agreed to in the construction contract, or (3) the scope of the work set forth in the construction contract documents, unless such representation is specifically provided for, set forth and authorized in this Agreement or thereto.

The COUNTY will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the CONSULTANT not specifically provided for and authorized as stated hereinabove.

## **ARTICLE 16.00 - OWNERSHIP OF DOCUMENTS**

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the CONSULTANT under this Agreement shall be property of the CONSULTANT until the CONSULTANT has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the COUNTY of a written Change Order deleting all or portions of the scope of services or task(s) to be provided or performed by the CONSULTANT, all of the above documents, to the extent requested in writing by the COUNTY, shall be delivered by the CONSULTANT to the COUNTY within seven (7) calendar days of the COUNTY making such a request. In the event the COUNTY gives the CONSULTANT a written Notice of Termination of all or part of the services or work required, or upon the issuance to the CONSULTANT by the COUNTY of a written Change Order deleting all or part of the services or work required, the CONSULTANT shall deliver to the COUNTY the requested documents as set forth hereinabove, with the mutual understanding and commitment by the COUNTY that compensation earned or owing to the CONSULTANT for services or work provided or performed by the CONSULTANT prior to the effective date of any such termination or deletion will be paid to the CONSULTANT within thirty (30) calendar days of the date of issuance of the Notice of Termination or Change Order.

The CONSULTANT, at its expense, may make and retain copies of all documents delivered to the COUNTY for reference and internal use. The CONSULTANT shall not, and agrees not to, use any of these documents, and data and information contained therein on any other project or for any other client without the prior expressed written permission of the COUNTY.

Any use by the COUNTY of said documents, and data and information contained therein, obtained by the COUNTY under the provisions of this Agreement for any purpose not within the scope of this Agreement shall be at the risk of the COUNTY, and without liability to the CONSULTANT. The COUNTY shall be liable and agrees to be liable for and shall indemnify, defend and hold the CONSULTANT harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the COUNTY'S use of such documents in a manner contrary to the provisions set forth hereinabove. The COUNTY hereby acknowledges receipt of \$10.00 (ten and no hundreds dollars) and other good and valuable consideration from the CONSULTANT which has been paid as specific consideration for the indemnification provided herein.

## **ARTICLE 17.00 - MAINTENANCE OF RECORDS**

The CONSULTANT will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the CONSULTANT for a minimum of five (5) years from the date of termination of this Agreement.

The COUNTY and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the COUNTY deems necessary during the period of this Agreement, and during the period five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours and at the expense of the COUNTY, and provided further that to the extent provided by law the COUNTY shall retain all such records confidential.

#### **ARTICLE 18.00 - HEADINGS**

The HEADINGS of the Articles, Sections, Exhibits, Attachments, Phases or Tasks as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Exhibits, Attachments, Phases or Tasks.

#### **ARTICLE 19.00 - ENTIRE AGREEMENT**

This Agreement, including referenced Exhibits and Attachments hereto, constitutes the entire Agreement between the parties hereto and shall supercede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatever on this Agreement.

The following listed documents, which are referred to hereinbefore, are attached to and are acknowledged, understood and agreed to be an integral part of this Agreement:

#### **ARTICLE 19.00 - ENTIRE AGREEMENT (Continued)**

- (1) EXHIBIT "A" entitled "Scope of Professional Services" dated February 7, 2003
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment" dated February 7, 2003
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance" dated February 7, 2003
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub-Consultant(s) and SubContractor(s)" , dated February 7, 2003
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria", dated February 7, 2003
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate", dated February 7, 2003
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)

## **ARTICLE 20.00 - NOTICES AND ADDRESS OF RECORD**

### **20.01 NOTICES BY CONSULTANT TO COUNTY**

All notices required and/or made pursuant to this Agreement to be given by the CONSULTANT to the COUNTY shall be in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following COUNTY address of record and sent to the attention of the County's Project Manager:

Lee County Board of County Commissioners  
Post Office Box 398  
Fort Myers, Florida 33902-0398

### **20.02 NOTICES BY COUNTY TO CONSULTANT**

All notices required and/or made pursuant to this Agreement to be given by the COUNTY to the CONSULTANT shall be made in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following CONSULTANT'S address of record:

Cella & Associates, Inc.  
2125 First Street  
Suite 201  
Fort Myers, FL 33901  
Telephone Number: (239) 337-1071  
Fax Number: )239) 337-1076

ATTENTION: Kris Cella, CEO  
Project Director

### **20.03 CHANGE OF ADDRESS OF RECORD**

Either party may change its address of record by written notice to the other party given in accordance with the requirements of this Article.

## **ARTICLE 21.00 - TERMINATION**

This Agreement may be terminated by the COUNTY at its convenience, or due to the fault of the CONSULTANT, by the COUNTY giving thirty (30) day written notice to the CONSULTANT.

If the CONSULTANT is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the CONSULTANT or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the COUNTY'S designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the COUNTY may, without prejudice to any other right or remedy, and after giving the CONSULTANT a thirty (30) calendar day written notice, terminate this Agreement.

REV:10/28/93

In addition to the COUNTY'S contractual right to terminate this Agreement in its entirety as set forth above, the COUNTY may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services as set forth in Exhibit "A", or the Project Guidelines and Criteria as set forth in Exhibit "E", or as such may be established by Supplemental Agreement or Supplemental Task Authorization or Change Order Agreement. The COUNTY shall provide written notice to the CONSULTANT in order to implement a stoppage, suspension, supplement or change.

The CONSULTANT may request that this Agreement be terminated by submitting a written notice to the COUNTY dated not less than thirty (30) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the COUNTY reserves the right to accept or not accept the termination request submitted by the CONSULTANT, and no such termination request submitted by the CONSULTANT shall become effective unless and until CONSULTANT is notified, in writing, by the COUNTY of its acceptance.

#### **21.01 CONSULTANT TO DELIVER MATERIAL**

Upon termination, the CONSULTANT shall deliver to the COUNTY all papers, drawings, models, and other material in which the COUNTY has exclusive rights by virtue hereof or of any business done, or services or work performed or provided by the CONSULTANT on behalf of the COUNTY.

#### **ARTICLE 22.00 - AMENDMENTS**

The covenants, terms and provisions set forth and contained in all of the Articles to this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement, as evidenced by Exhibit H for amending articles. In the event of any conflicts between the requirements, provisions and/or terms of the Agreement and any written Amendment (Exhibit H), the requirements, provisions and/or terms of the Amendment shall take precedence.

#### **ARTICLE 23.00 - MODIFICATIONS**

Modifications to covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed SUPPLEMENTAL AGREEMENT(S), or WORK ORDER(S) or CHANGE ORDER(S) or SUPPLEMENTAL TASK AUTHORIZATION(S). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written SUPPLEMENTAL AGREEMENT(S), WORK ORDER(S), CHANGE ORDER(S), and/or SUPPLEMENTAL TASK AUTHORIZATIONS, the latest executed SUPPLEMENTAL AGREEMENT(S), WORK ORDER(S), CHANGE ORDER(S), and/or SUPPLEMENTAL TASK AUTHORIZATION(S) shall take precedence.

In the event the COUNTY issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the COUNTY'S internal control purposes only, and any and all terms, provisions and conditions contained therein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

**ARTICLE 24.00 - ACCEPTANCE**

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

ATTEST:  
CLERK OF CIRCUIT COURT  
Charlie Green, Clerk

COUNTY: LEE COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

BY:

BY: \_\_\_\_\_  
Chairman

DATE: \_\_\_\_\_

APPROVED AS TO FORM

BY: \_\_\_\_\_  
County Attorney's Office

ATTEST:

Darcy Scott  
(Witness)

\_\_\_\_\_  
Cella & Associates, Inc.

BY: Kris Cella  
Kris Cella, CEO

Patricia Lake  
(Witness)

DATE: 2/10/03

CORPORATE SEAL

## EXHIBIT A

Date: February 7, 2003

### SCOPE OF PROFESSIONAL SERVICES

#### For Sandy Lane Extension Corridor Alignment Study

### BASIC SERVICES

#### Section 1. GENERAL SCOPE STATEMENT

The Consultant shall provide and perform the following professional services, which shall constitute the GENERAL SCOPE of the BASIC SERVICES under the covenants, terms, and provisions of this PROFESSIONAL SERVICES AGREEMENT or SERVICE PROVIDER AGREEMENT:

(Brief description or listing of the full range of services or tasks that may be required to complete this project, all of which may not necessarily be authorized at the time this original Agreement is executed.)

The Consultant shall provide and perform the following professional services, which shall constitute the GENERAL SCOPE of the BASIC SERVICES under the covenants, terms, and provisions of this PROFESSIONAL SERVICES AGREEMENT or SERVICE PROVIDER AGREEMENT.

The purpose of this Exhibit is to describe the Scope of Services and the responsibilities of the CONSULTANT and the COUNTY in connection with the CORRIDOR ALIGNMENT STUDY necessary to comply with COUNTY procedures.

#### General Information

The CONSULTANT shall perform those environmental, and engineering services required for a Corridor Alignment Study. This includes consideration of all social, economic, and environmental effects, and mitigation as required by the COUNTY for the listed tasks. In addition, the CONSULTANT will prepare the required environmental and engineering reports, and Conceptual Design Plans, and assist as necessary with the Public Workshop.

The project limits of the SANDY LANE EXTENSION CORRIDOR ALIGNMENT study will be generally east of U.S 41 from Old 41 to Oriole Rd. More specifically the maximum extent of the corridor will be in these areas:

- Between Old 41 and Coconut Road from Red Robin Drive to Production Circle.
- Between Coconut Road and Williams Road from Seminole Gulf Railway to 1000 feet west of the centerline of the Seminole Gulf Railway.

- Between Williams Road and the existing intersection of Sandy Lane with Corkscrew Road from 300 feet east of the eastern section line of S33 T46S R25E to 800 feet west of the section line.
- Existing Sandy Lane right of way between Corkscrew Road and East Broadway.
- Between Broadway East and Koreshan Boulevard 500 feet east and west of the eastern section line of S28 T46S R25E.
- Between Koreshan Boulevard and the existing southern terminus of Oriole Road in San Carlos Park 200 feet east and west of the eastern section line of S21 T46S R25E.
- Existing Oriole Road right of way north to Alico Road in San Carlos Park.

The existing segments of Old 41, Sandy Lane and Oriole Road will be utilized to the greatest extent feasible.

It shall be the CONSULTANT'S responsibility to utilize the very best engineering judgment, practices and principles possible during the prosecution of the work commissioned under this contract.

The CONSULTANT shall be aware that as a project is developed, certain minor modifications and/or improvements to the original recommendation may be required. The CONSULTANT is to incorporate these refinements into the design and will consider this effort to be an anticipated and integral part of the work. This will not be a basis for any supplemental fee request(s).

The CONSULTANT shall demonstrate good project management practices while working on this project. This includes communication with the COUNTY and others as necessary, management of time and resources, and documentation. The CONSULTANT shall set up and maintain throughout the design of the project a contract file in accordance to COUNTY procedures.

The COUNTY will provide contract administration, management services, and technical reviews of all work associated with the development and preparation of the contract plans. The COUNTY will provide job specific information and/or functions as outlined in this contract.

The general objective of the study is to provide documented information necessary for the COUNTY to reach a decision on the type, design, and location of a transportation facility east of U.S. 41 from Old 41 to Oriole Rd.

The detailed information generated during the study will be analyzed, evaluated and comprehensively documented in a series of reports predicting impacts, and estimating costs associated with the improvement of the transportation facility. Preliminary location and design recommendations will include alignments, typical sections, right-of-way requirements, and estimated costs. The CONSULTANT will recommend the Preferred Alternative(s) based on this process.

## **SECTION 2 TASKS**

Pursuant to the GENERAL SCOPE of the BASIC SERVICES stated herein above, the CONSULTANT shall perform all services and/or work necessary to complete the following task(s) and/or provide the following item(s) which are enumerated to correspond to the task(s) and/or items set forth in EXHIBIT "B" entitled "COMPENSATION AND METHOD OF PAYMENT."

### **Task Index**

- Task 1 - Preliminary Matters
- Task 2 - Public & Agency Involvement
- Task 3 - Environmental Data Collection, Analysis and Reports
- Task 4 - Engineering Data Collection, Analysis And Reports
- Task 5 - Design/Right-of-Way Surveys
- Task 6 - Right-of-Way Mapping
- Task 7 - Non-Personnel Reimbursements and Costs
- Task 8 - Study Requirements and Provisions for Work

## **Task 1 - Preliminary Matters**

### **A. Introductory Meeting**

Prior to beginning work and after the issuance of the written Notice to Proceed, the CONSULTANT shall meet with the COUNTY; the purpose of this introductory meeting is three-fold:

1. The COUNTY shall render all relevant information in its possession. This may include previous correspondence, traffic figures, planning information, existing right-of-way and utility information, plans, and previous inspection reports.
2. The COUNTY shall review with the CONSULTANT how the CONSULTANT will conduct the study process.
3. The COUNTY shall review with the CONSULTANT the financial administration of the contract, method of progress reporting and invoice preparation.

### **B. Kickoff Letter**

Within 30 days of the project initiation, a Kickoff (Introductory) Letter will be mailed by the CONSULTANT to local officials to describe the study intent and schedule and provide contacts for further information.

## **Task 2 - Public & Agency Involvement**

Public Involvement includes communicating to all interested persons, groups, and government organizations information regarding the development of the project.

### **A. Public Workshop**

After holding the three community meetings a Public Workshop will be held to present to the public the results of the study to date and obtain comments on the Alternatives. It is possible that the citizens may suggest additional alternatives.

The workshop is to be advertised and conducted as an informational meeting, and shall include display graphics. The CONSULTANT shall attend the workshop and prepare all necessary displays, maps, scripts, etc. All presentations (script and graphics), media releases, legal display advertisements, and general (mass) property owner letters will be reviewed and approved by the COUNTY prior to distribution.

A black-and-white, quarter-page display advertisement announcing the meetings shall be prepared and submitted to the COUNTY for approval. The CONSULTANT shall publish the advertisement in the three (3) local newspapers: The Bonita Banner, The News Press, and The Naples Daily News.

Advertising costs are the responsibility of the CONSULTANT. The CONSULTANT shall make notification to elected and appointed officials and other interested persons by letter on COUNTY stationery before the workshop. Mailing costs are the responsibility of the CONSULTANT. A letter on COUNTY letterhead stationery announcing the workshop shall be written and sent by the CONSULTANT ten (10) days before the workshop to all property owners whose property lies in whole or in part within 300 feet of the centerline of any Design Alternative. Mailing costs are the responsibility of the CONSULTANT. News releases shall be prepared and submitted for publication by the CONSULTANT during the week of the workshop. Mailing costs are the responsibility of the CONSULTANT.

The workshop format shall be developed by the CONSULTANT and will be approved for review by the COUNTY. The CONSULTANT shall prepare displays or wall graphics for use during the workshop. These include typical sections, aerials, renderings, charts, and graphs, as needed. The CONSULTANT shall prepare a project brochure for distribution at the workshop.

Meeting equipment setup and take down shall be handled by CONSULTANT staff members familiar with the facilities available at the workshop site. Briefing of the staff (who will be on hand during the workshop) shall be done just before the workshop to make sure the staff is up to date on the project and understands the study well enough to discuss it with the public and to answer questions. Conducting the workshop will take knowledgeable staff and shall require enough staff members to handle the crowd anticipated for the workshop. Although the workshop may be scheduled for a certain time period, staff shall be available for some time before and/or after those set hours in order to maintain public contact or for media interviews, etc.

The identification of issues brought up at the workshop is an integral part of the Workshop Debriefing Process, which should be attended by all staff members taking part in the workshop process and talking with the public. Once issues have been identified from the workshop, their significance shall be determined. If the issues are determined to be valid enough or if they have elements requiring further consideration they must be addressed.

#### **B. Coordination Meeting with Local Officials**

Two meetings shall be held with City of Bonita Springs staff. Presentations will be made to the City Council of Bonita Springs and the Lee County Commission. Meetings will be held prior to and subsequent to the Public Workshop to apprise local officials of the project status, specific location and design concepts, and to receive their comments. A presentation will also be made to the Metropolitan Planning Organization to apprise them of the project.

#### **C. Public Involvement Data**

The CONSULTANT will be responsible for the collection of Public Involvement data and the preparation of the Mailing List early in the Corridor Alignment Study. The mailing list will include:

- Any affected or possibly affected parties
- Elected and appointed officials in the area (City, County, State) and community leaders
- Possible permit and review agencies
- Media in the project area (to be used for news releases, advertisements or any concerns)
- Any person or institution expressing an interest in the project

The collection of public input occurs throughout the life of the project and requires maintaining of files, newspaper clippings, letters, and especially direct contacts before, during and after any of the public meetings. In addition to collecting public input data, the CONSULTANT shall assist the COUNTY in preparing responses that will be incorporated into the Comments & Coordination Report to any public inquiries as a result of the Public Involvement Process.

**D. Special Public Involvement Requirements**

1. Identify and Inspect Public Meeting Sites

Prospective sites for any meetings to be held shall be inspected for suitability. Consideration shall be given to location, seating capacity, sound system, lighting, display space and any other physical characteristics which would influence the viability of this site, including compatibility with the terms of the Americans with Disabilities Act of 1990. The CONSULTANT shall make all arrangements for use of the meeting facility for the Public Workshop including payment of any rental fees, if applicable.

2. Correspondence

Within three (3) days of the receipt or mailing of all written correspondence between the CONSULTANT and any party pertaining specifically to this study, copies shall be provided to the COUNTY for their records.

3. Public Involvement Technical Memorandum

The Public Involvement Technical Memorandum shall contain, at a minimum, documentation of the public participation accomplished throughout study period. This report should summarize and respond to the comments received from the Public Workshop.

4. Coordination with Webmaster

The CONSULTANT shall provide the Webmaster public meeting announcements for posting on the County's web site. The Public Workshop Technical Memorandum shall be posted on the County project web site.

**E. Public Hearing**

Attend a Public Hearing at the County Commission Meeting to adopt the final alignment. The CONSULTANT shall send a notification of this hearing to all parties on the mailing list. Prepare agenda and presentation boards depicting the project. Provide project information, evaluate and consider identified concerns or challenges and revise plans as approved by the County.

**Task 3 - Environmental Data Collection, Analysis and Reports**

The CONSULTANT shall perform the services outlined in this section necessary to assess the environmental consequences or impacts of Alternatives that are being considered to satisfy the project's need. This effort consists of collecting essential data, analyzing and comparing viable Design Alternatives, and documenting environmental impacts and recommendations coincidentally with the engineering data collection and analyses. The CONSULTANT shall coordinate and perform the appropriate level of environmental analysis for this project as outlined in the following sections.

## **A. Environmental Data Collection**

Upon Notice to Proceed, the CONSULTANT shall begin preliminary assessments of the study corridor from an environmental standpoint. The data gathering consists of collecting various information and materials needed for the environmental analysis. The information should include all data necessary to perform adequate evaluation of the social, natural and physical impacts in determining the location and design of a transportation facility. This activity consists of collecting and recording various and current photographic, cartographic, technical report, planning, and observational data relative to the natural, man made, cultural, socioeconomic, physical, political and aesthetic features influencing the development of appropriate Alternative locations.

The CONSULTANT shall further familiarize themselves with the study area by making location visits to further ground truth mapped features and reveal unmapped features that potentially could impact or influence the selection of a Preferred Alternative(s). Observations of unmapped features would include:

- Pedestrian movement and critical linkages with commercial and institutional sites
- Bicycle usage/traffic
- Recreational site usage
- Visual/scenic resources
- Mapped and Unmapped wetlands
- Threatened and Endangered Species

The CONSULTANT shall develop a CADD database that includes all existing environmental features. This information is to be included on the Corridor Base Map(s). Utilizing this data, the CONSULTANT shall perform the environmental analysis necessary to compare the environmental impacts of the proposed project Alternatives. The environmental analysis will be performed concurrently with the engineering analysis and the development of Alternatives.

## **B. Analysis of Social Impacts**

### **1. Land Use Information**

The CONSULTANT is responsible for the following:

- Collect data regarding past and present land usage as well as future land use plans, proposed developments, current zoning, municipal comprehensive plans, and observed growth trends.
- Collect data required to prepare corridor analysis maps indicating current residential, commercial, industrial, public, agricultural, and designated future land use for vacant parcels adjacent to the alignment.

## **C. Analysis of Natural Impacts**

The CONSULTANT shall perform an analysis of the natural impacts of all proposed Design Alternatives. This shall include identifying possible permit requirements, a general location and size of wetland areas, threatened and endangered species. The environmental evaluation shall be included in the Preliminary Engineering Report.

## **Task 4 - Engineering Data Collection, Analysis And Reports**

The CONSULTANT shall perform the services outlined in this section necessary to develop engineering alternatives that satisfy the project's need. This effort consists of collecting essential data, analyzing and comparing viable alternatives, and documenting engineering decisions and recommendations. The CONSULTANT shall coordinate and perform the appropriate level of engineering analysis for this project.

### **A. Engineering Data Collection**

Immediately following the Notice to Proceed, the CONSULTANT shall begin preliminary assessments of the study area from an engineering and environmental standpoint. This task is largely of a data gathering nature. This activity consists of collecting various information and materials relative to the performance of engineering and environmental analyses within the study area. The information should include data necessary to perform adequate evaluation of the location and design of an improved transportation facility for the corridor.

#### **1. Aerial Photography**

The COUNTY shall provide the CONSULTANT 1" = 100' scale current color aerial photography for this project. The aerial photography will be used for base maps, conceptual design plans, land use and property ownership inventory, ecological community delineation, noise modeling, engineering and environmental analysis, alternative analysis, coordination meetings, and public meeting displays.

#### **2. Existing Highway Characteristics**

This task includes gathering data on pertinent corridor physical features and conditions, which help in better understanding the existing roadway, and bridge segments under consideration in this contract. Most of this information is available from the COUNTY, however other references including field observations and interviews with local agencies and individuals will yield additional data. Possible sources include project files, contract documents, right-of-way maps, drainage maps, as built plans, and prior studies.

The CONSULTANT shall be responsible to procure the engineering data and prepare a Preliminary Engineering Report. The CONSULTANT shall develop a CADD database, supported by computer spread sheets, that includes existing highway characteristics noted above, as appropriate. CADD data base information shall be compatible for use on aerial photography used for displays, the Corridor Base Map(s), and Conceptual Design Plans.

#### **3. Traffic Data**

The CONSULTANT shall furnish a project traffic report. The project traffic report may include the following:

- Existing condition AADT on U.S. 41, Old 41, Sandy Lane, Oriole Road and Three Oaks Parkway

- Existing P.M. peak hour intersection turning movement counts on Old 41 at U.S. 41, Old 41 at Strike Lane, Sandy Lane at Corkscrew Road, Sandy Lane at Broadway east, Oriole Road at San Carlos Boulevard, Oriole Road at Alico Road
- Determine appropriate peak season, peak hour ( $K_{100}$ ), directional (D) and truck (T) factors for the project
- Determine volume to capacity ratio analyses for appropriate cutlines in the study area
- Review of HEVAL output data for with and without project traffic
- Review of the Simon Mall DRI approved traffic study
- Future condition forecasted 2010 and 2020 AADT on U.S. 41, Old 41, Sandy Lane, Oriole Road and Three Oaks Parkway
- Forecast Methodology

#### 4. Utilities

The CONSULTANT shall identify the following existing and proposed utilities as provided by the utility companies which may influence location and design considerations:

- Overhead: Transmission lines, microwave towers, etc.
- Underground: Water, gas, sanitary sewer, force mains, power cables, telephone cables, etc.

#### 5. Transportation Plans

The CONSULTANT shall obtain plans for all modes of transportation including surface, transit and non-motorized modes. The following plans or studies should be obtained:

- Urban Area Transportation Study and the Lee County Cost Feasible and Needs Plans
- Local comprehensive plans: City and County
- Transit: rail, bus, other
- Non-motorized modes, including bikeways and pedestrian walkways

Interview local transportation professionals and staff to identify the following factors: existing and projected road user types including handicapped and the elderly; existing and projected high traffic generators; existing and anticipated hazards; high crash or problem locations.

### **B. Engineering Analysis**

Utilizing the data collected as part of this Scope of Services, the CONSULTANT shall perform the engineering analysis necessary to complete the Engineering Report described herein. The task of Engineering Analysis will be ongoing throughout the duration of the project and will be performed with consideration of the results of the environmental impact analysis.

#### 1. Project Need

The CONSULTANT shall establish the need for the facility improvements based a qualitative analysis of projected level of service of adjacent roadways with and without the project.

## 2. Base Map(s)

The CONSULTANT shall plot, delineate and label pertinent cultural and natural and geopolitical features bordering the alignments on 1" = 100' aerial photography for subsequent use in the evaluation and development of the Conceptual Plans. The Base Map(s) must include, at a minimum:

- Number of lanes, signals, crosswalks, cross drains, existing intersections, and drainage easements
- Street names and highway numbers
- Pertinent cultural and natural features
- Locate north arrow, scale and aerial flight date at upper-mid portion of the plan sheets
- Existing and proposed rights of way and platted property lines as obtained from the property appraisers records and community development
- Public and private development, as well as archaeological or historic sites
- Significant features which could be impacted by the project, especially wetlands
- Hazardous material and petroleum use sites
- Utility easements that are identified on the County's GIS system, any easements that are made known by the utility companies provided by County Lands.
- Land use information (names of establishments, etc.); current zoning, future land use (per Comprehensive Plan) for vacant properties
- New data as it becomes available to keep the Corridor Base Map(s) up to date

## 3. Conceptual Design Analysis

The CONSULTANT shall develop and analyze a maximum of three conceptual Alternatives. The objective of the conceptual design and preliminary engineering analysis is to develop viable Alternatives based on standard engineering practice which provide an appropriate highway level of service commensurate with the social, economic, and environmental impacts involved. The CONSULTANT shall recommend to the COUNTY the most feasible Alternatives which will improve connectivity within and between communities while providing the COUNTY a safe route. The design of the proposed improvement shall be established and developed in conceptual form, but in sufficient detail, to permit definitive analysis.

The analysis of the Alternatives shall identify the nonviable Alternatives and provide documentation for rejection. The more viable Alternatives shall be further evaluated to a point where Conceptual Plans can be developed.

## 4. Alternatives Evaluation and Selection

The CONSULTANT shall identify, develop, and analyze feasible Alternatives. For each Alternative, the CONSULTANT shall determine:

- Horizontal alignment
- Typical section
- Preliminary right-of-way costs
- Preliminary drainage to the extent of identifying required outfalls
- Traffic data
- Geometric concepts of intersections, access to recreational areas, and adjacent property
- Existing and proposed utility location to the extent they affect the decision process

- Extent of improvement to connecting and/or intersecting roads
- Acreage involved
- Provide suggestions of possible pond site locations
- Other such design features as may be pertinent

a. Typical Section Evaluation

Five typical sections to be evaluated for this project shall include two lanes. With consideration of business and residential development, drainage requirements and environmental impacts, the CONSULTANT will establish the type of design (urban or rural) for the proposed facility. The facility will be a collector facility, have a 35 MPH design speed and accommodate bicycles and pedestrians. The drainage features, aesthetics, landscaping, existing typical section, and environmental impacts are major points to be considered in the design of a typical section.

b. Alignment

Alignments shall be refined in conjunction with the typical sections to identify Design Alternatives. Alignments shall be evaluated by using all documented data collected including but not limited to: natural and cultural features, existing and proposed development, maintenance of traffic, hazardous material and petroleum contamination, and right-of-way. Right-of-way estimates shall be prepared on prints of the Corridor Base Map(s). The estimates shall be on a set of prints having the right-of-way lines color coded (existing right-of-way lines in green, proposed right-of-way lines in red). Before preparing these prints, the CONSULTANT and the COUNTY shall jointly decide which Design Alternatives shall be evaluated for right-of-way, business and relocation costs.

5. Cost Analysis

The CONSULTANT shall develop cost opinions for each Alternative, including:

- Construction cost opinions for all Alternatives including order of magnitude conceptual maintenance of traffic costs.
- Estimates of right-of-way acquisition costs will be supplied by the COUNTY

6. Comparative Analysis of Alternatives

After developing the viable Alternatives and opinions of costs, the CONSULTANT will prepare a matrix comparing the significant impacts and costs of the Alternatives evaluated with a recommendation of the most viable Alternative(s). The possibility exists that the No-Build alternative may be selected at this point.

a. The types of information evaluated in this task include:

- Construction costs - Develop the construction cost opinion; include cost for engineering and contingencies.
- Right-of-way costs and business damages - These estimates will be furnished by the COUNTY for all viable Alternative(s).
- Engineering Costs - Estimated cost to prepare construction plans and costs for Construction Engineering Inspection (CEI)

- Traffic Impacts – Which may include determining LOS for each Design Alternative for design year
- Utilities - The CONSULTANT shall conduct utility coordination and identify existing and proposed utility facilities.
- Hazardous Material and Petroleum - Evaluate contamination cleanup costs and production delays
- Transportation Plans - Determine conformance with local comprehensive plans, both city and COUNTY

b. Proposed Alternative Solutions

Following performance of the comparative analysis of Alternatives, the COUNTY will select the viable Alternative (s). The information amassed thus far will be the basis upon which the decisions are made. The possibility exists that the No-Build Alternative may be selected at this point. Prints of the Conceptual Plans shall be prepared for use in review, at public meetings and for further refinement.

c. Final Recommendation of Preferred Alternative

The CONSULTANT shall recommend a Preferred Alternative(s) based on a review and analysis of all engineering, environmental, and Public Involvement issues related to the project.

**C. Engineering Reports**

The CONSULTANT shall document the results of the data collection efforts and the engineering analysis performed as part of this Scope of Services. The engineering reports and documents shall be prepared as outlined herein. The task of documentation includes the preparation of draft reports prepared by the CONSULTANT for review and comment by the COUNTY prior to producing final reports and documents.

1. Base Map(s)

The CONSULTANT will prepare the 24X36 Base Map(s) on aerial photography for presentation purposes.

2. Preliminary Engineering Report

The CONSULTANT shall prepare a Preliminary Engineering Report (PER) to document the CORRIDOR ALIGNMENT STUDY. Included in that report will be the typical sections and Conceptual Design Plans of all viable Design Alternatives and the Preferred Alternative(s). The Conceptual Design Plans included in the PER shall be 11X17 sheets.

a. Draft Preliminary Engineering Report

The information amassed thus far shall be submitted in the first draft PER. The first draft PER shall be submitted to the COUNTY for review.

b. Final Preliminary Engineering Report

The first draft PER shall be updated to reflect all changes resulting from any Public Workshop(s). Following the Workshop, and allowing sufficient time for all comments to be reviewed, the CONSULTANT shall recommend the Preferred Alternative(s) to the COUNTY. Once approved by the COUNTY, the CONSULTANT shall prepare the final PER.

The CONSULTANT shall provide recommendations for feasibility of construction.

The report shall be signed, sealed and dated by a Professional Engineer registered in the State of Florida.

**Task 5 - Design/Right-of-Way Surveys**

The COUNTY will furnish any right of way survey information necessary for this project.

**Task 6 - Right-of-Way Mapping**

The COUNTY will furnish any Right of Way Mapping services necessary for this project.

**Task 7 - Non-Personnel Reimbursement Expenses and Costs**

The CONSULTANT shall submit to the COUNTY, as specified in Attachment 2 to Exhibit B, non-personnel reimbursement expenses and costs required to conduct the study.

**Task 8 - Study Requirements and Provisions for Work**

**A. Governing Regulations**

The services performed by the CONSULTANT shall be in compliance with all applicable Manuals and Guidelines. The Manuals and Guidelines incorporate by requirement or reference all applicable State and Federal regulations. The standards referred to and recommended in the AASHTO and the COUNTY's Design Criteria related to highway safety shall be used to the extent applicable. The horizontal and vertical alignments developed by the CONSULTANT shall be the best engineering solution to a given problem and not merely an adherence to the minimum AASHTO standards.

**B. Project Schedule**

Within ten (10) days after the Notice-To-Proceed, and prior to the CONSULTANT beginning work, the CONSULTANT shall provide a detailed project activity/event schedule for the COUNTY.

**C. Key Personnel**

The CONSULTANT'S work shall be performed and directed by the key personnel identified in the proposal presentations by the CONSULTANT. Any changes in the indicated personnel shall be subject to review and approval by COUNTY.

**D. Progress Meetings & Reports**

The CONSULTANT, with appropriate sub-consultants, shall meet with the COUNTY monthly and provide written progress reports and other presentation materials which describe the work performed on each task. Progress reports shall be delivered to the COUNTY concurrently with the monthly draft invoice. Judgments on whether work of sufficient quality and quantity has been accomplished will be made by the COUNTY's Project Manager.

**E. Submittals**

The CONSULTANT shall furnish prints, documents and an electronic file as required by the COUNTY to adequately control, coordinate, and approve the plans.

The CONSULTANT shall provide copies of the required prints, sepias and documents as listed below. These are the anticipated printing requirements for the project. The tabulation will be used for estimating purposes. Generally, there are two (2) draft and four (4) final copies for COUNTY review plus the two copies for the City of Bonita Springs, FDOT and SFWMD and Corps of Engineers.

<u>DOCUMENT</u>	<u>QTY.</u>	<u>SHEET SIZE</u>
Contamination Screening Evaluation	06	8-1/2"x11"
Preliminary Engineering Report	20	8-1/2"x11"
Comments and Coordination Report	10	8-1/2"x11"

**F. County Services**

The COUNTY shall provide those services and materials as set forth below:

1. Project data currently on file.
2. Engineering and Environmental Review Services.
3. Aerials
4. Right-of-way costs from County Lands

**Task 9 – Additional Services**

Upon written authorization from the COUNTY, the CONSULTANT will perform additional services in connection with the project not otherwise identified in this Agreement. The following items are not included as part of this Agreement, but may be required by the COUNTY to supplement the CONSULTANT services under this Agreement.

**A. Community Meetings**

Three (3) community meetings will be held to present information about the project and solicit comments. The meetings will be held with San Carlos Park civic associations, the Estero area including the Brooks and the Bonita Springs/Old 41 area. The project team will also present to the Estero Community Planning Group to discuss the project.

Date: February 7, 2003COMPENSATION AND METHOD OF PAYMENTfor Sandy Lane Extension Corridor Alignment StudySection 1. BASIC SERVICES/TASK(S)

The COUNTY shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
1.0	Preliminary Matters	\$4,959.10	NTE	
2.0	Public & Agency Involvement	\$68,016.24	NTE	
3.0	Environmental Data Collection, Analysis and Reports	\$16,223.92	NTE	
4.0	Engineering Data Collection, Analysis and Reports	\$100,841.10	NTE	
8.0	Study Requirements & Provisions	\$8,339.28	NTE	
9.0	Additional Services	\$6,976.14	NTE	
7.0	Non-Personnel Reimbursable Expenses	\$11,064.00	LS	
<b>TOTAL</b>		<b>\$216,419.78</b>		

(Unless list is continued on next page)

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Section 2. ADDITIONAL SERVICES

The COUNTY shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the COUNTY shall be as set forth in Article 3.11 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated February 7, 2003, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of outof-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto dated, February 7, 2003 entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: February 7, 2003

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE \*\*\*

for Sandy Lane Extension Corridor Alignment Study

CONSULTANT OR SUB-CONSULTANT NAME Cella & Associates, Inc.

(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Project Manager			\$111.00
Senior Professional			\$92.30
Planner			\$78.18
Technician			\$67.11
Administrative			\$57.82

\*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

\*\*NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative and overhead costs, and profit.

\*\*\*NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: February 7, 2003

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE \*\*\*

for Sandy Lane Extension Corridor Alignment Study

(Enter Project Name from Page 1 of the Agreement)

CONSULTANT OR SUB-CONSULTANT NAME Pitman-Hartenstein & Associates,

(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Project Manager			\$125.00
Senior Professional			\$115.00
Professional			\$100.00
Designer			\$85.00
Senior Technical			\$75.00
Technical			\$65.00
Clerical			\$45.00

\*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

\*\*NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative and overhead costs, and profit.

\*\*\*NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

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09/25/01

ATTACHMENT NO. 1 TO EXHIBIT B

Date: February 7, 2003

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE \*\*\*

for Sandy Lane Extension Corridor Alignment Study

(Enter Project Name from Page 1 of the Agreement)

CONSULTANT OR SUB-CONSULTANT NAME CRSPE, Inc.

(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Senior Professional			\$125.00
Professional			\$ 90.00

\*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

\*\*NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative and overhead costs, and profit.

\*\*\*NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

CMO:033  
09/25/01

ATTACHMENT NO. 1 TO EXHIBIT B

Date: February 7, 2003

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE \*\*\*

for Sandy Lane Extension Corridor Alignment Study

CONSULTANT OR SUB-CONSULTANT NAME Boylan Environmental Consultants, Inc.  
(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Senior Environmental  Environmental			\$95.00
			\$80.00

\*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

\*\*NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative and overhead costs, and profit.

\*\*\*NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".











Date: February 7, 2003

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S)

For Shady Lane Extension Corridor Alignment Study

CONSULTANT has identified the following Sub-Consultant(s) and/or SubContractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm	Disadvantaged, Minority or Women Business Enterprise. (If Yes, Indicate Type)			Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
		Yes	No	Type	Yes	No
Engineering	Pitman Hartenstein & Associates, Inc 12701 World Plaza Lane Building 80 Fort Myers, FL 33907 (239) 936-6466		X		X	
Environmental Evaluation & Mitigation	Boylan Environmental Consultants 11000 Metro Parkway Suite 4 Fort Myers, FL 33912 (239) 418-0671	X		WBE	X	
Traffic Evaluation & Access Management	CRSPE, Inc. 1414 S.E. 17 <sup>th</sup> Avenue Suite 104 Cape Coral, FL 33990 (239) 573-7960		X		X	
Contamination Screening	Ardaman & Associates, Inc. 9970 Bavaria Road Fort Myers, FL 33913 (239) 768-6600		X		X	

EXHIBIT E

Date: February 7, 2003

PROJECT GUIDELINES AND CRITERIA

for Sandy Lane Extension Corridor Alignment Study

The COUNTY has established the following Guidelines, Criteria, Goals, Objectives, Constraints, Schedule, Budget and/or Requirements which shall serve as a guide to the CONSULTANT in performing the professional services and work to be provided pursuant to this Agreement:

(If none, enter the word "none" in the space below)

Item No. 1

**NONE**

EXHIBIT F

DATE: February 7, 2003

TRUTH IN NEGOTIATION CERTIFICATE

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the Lee County Board of County Commissioners for the project known as: Sandy Lane Extension Corridor Alignment Study

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Article 3.11.
2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth here-in-above.
3. The truth of statements made herein may be relied upon by the County and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the CONSULTANT, doing business as:

Kris Cella, Cella & Associates, Inc.  
2125 First Street, Suite 201 Fort Myers, FL 33901 (239) 337-1071

BY: Kris Cella [Signature]

TITLE: CEO

The foregoing instrument was signed and acknowledged before me this 10<sup>th</sup> day of February, 2003, by Kris Cella who has produced Personally Known as identification. (Print or Type Name) (Type of Identification and Number)

[Signature]  
Notary Public Signature

Nancy Scott  
Printed Name of Notary Public

Nancy E. Scott  
Commission #DD179350  
Expires: Feb 07, 2007  
Notary Commission Number/Expiration  
Atlantic Bonding Co., Inc.

CMO:  
00/00/00

12/05/02 THU 14:00 EST

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID #  
CELLA-2

DATE (MM/DD/YYYY)  
12/05/02

**PRODUCER**  
Oswald Trippe & Co. Ft. Myers  
P. O. Box 60139  
Ft. Myers FL 33906-6139  
Phone: 239-433-4535 Fax: 239-433-4148

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURED**  
Cella & Associates Inc  
2125 First Street Ste 201  
Fort Myers FL 33901

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	The Hartford Insurance Co.	22357
INSURER B:	CNA	
INSURER C:		
INSURER D:		
INSURER E:		

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	21SBABV9340	08/08/02	08/08/03	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ 2,000,000
A		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	21SBABV9340	08/08/02	08/08/03	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
A		<b>EXCESS/UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE \$ RETENTION \$	21SBABV9340	08/08/02	08/08/03	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$ \$ \$
A		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	21WECDW3634	07/08/02	07/08/03	WC STATU-TORY LIMITS <input checked="" type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B		<b>Professional Liability</b>	SFA113980045	09/17/00	09/17/03	Occurrence \$1,000,000 Aggregate \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 Project Name: Sandy Lane Extension Corridor Alignment Study (LC CN-02-29)

Lee County Board of County Commissioners is named as additional insured with interest in insured's operations with respect to General Liability only.

**CERTIFICATE HOLDER**

Lee County BOCC  
 Attn: Public Works Contract Management  
 PO Box 398  
 Fort Myers FL 33902-0398

LEKCO39

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*[Signature]*

Date: February 7, 2003

AMENDMENT TO ARTICLES

**for Shady Lane Extension Corridor Alignment Study**

For amending (i.e., changing, deleting from or adding to) the articles.

(NOTE: Each Article to be amended should be set forth and described in such a manner as to clearly indicate what the proposed changes, deletions or additions are with respect to the present Article provisions, and should set forth the wording of the Article resulting from the Amendment. The following identification system should be followed: Indicate additional (new) words or phrases by inserting the words in the text and then underline, (i.e., Months) and indicated words or phrases in the text to be deleted by striking over (i.e. ~~Weeks~~).

THE PROVISIONS HEREBY SUPERCEDE ANY PROVISIONS TO THE CONTRARY CONTAINED ELSEWHERE IN THE ARTICLES OR EXHIBITS.

**AMENDMENT NO.**

ARTICLE No. \_\_\_ is hereby amended as follows:

**NONE**

CMO:  
00/00/00